

PATENT
BEST AVAILABLE COPY Attorney Docket No. UM-03662

REMARKS

There are currently pending Claims 22-25 and 27-37 in the present application. The Examiner provides a number of rejections and we list them here in the order in which they are addressed:

I. Claims Are Allegedly Anticipated

- A. Claims 28-37 are rejected under 35 U.S.C. § 102(e) by Gosselin et al.
- B. Claims 22, 23, 27, 33, 34 and 37 are rejected under 35 U.S.C. § 102(b) by Imai et al.
- C. Claims 22, 24, 25, 27, 33, 35, 36 and 37 are rejected under 35 U.S.C. § 102(b) by Fujimura et al.
- D. Claims 22, 24, 25, 27, 33, 35, 36 and 37 are rejected under 35 U.S.C. § 102(b) by Ball et al.
- E. Claims 22, 24, 25, 27, 33, 35, 36 and 37 are rejected under 35 U.S.C. § 102(b) by O'Donnell et al.
- F. Claims 28, 29, and 32 are rejected under 35 U.S.C. § 102(b) by Martin et al.
- G. Claims 28, 29 and 32 are rejected under 35 U.S.C. § 102(b) by Iwama et al.

II. The Claims Are Not Anticipated

As the Examiner is well aware, a single reference must disclose each limitation of a claim in order for that reference to anticipate the claim. *Atlas Powder Co. v. E.I. du Pont De Nemours & Co.*, 224 U.S.P.Q. 409, 411 (Fed. Cir. 1984). This criterion is not met with any of the above references.

The Examiner provides a number of rejections using the above mentioned cited references disclosing the administration of sterile leukotriene solutions. The Examiner has not presented any evidence to show that these references anticipate the Applicants' presently amended claims. This amendment is made not to acquiesce to the Examiners' argument but only to further the Applicants' business interests, better define one embodiment and expedite

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the prosecution of this application. Applicants hereby expressly reserving the right to prosecute the original (or similar) claims. Specifically, the Applicants have further clarified their preferred embodiment by reciting antibiotics as discussed in the specification (see *Applicants' Specification* pg 6 ln 5-6). The Applicants argue that none of the cited references offered by the Examiner contain this element and therefore do not anticipate the Applicants' invention. The Applicants, therefore, respectfully request the Examiner withdraw all pending anticipation rejections.

CONCLUSION

The Applicant believes that the arguments and claim amendments set forth above traverse the Examiner's rejections and, therefore, request that all grounds for rejection be withdrawn for the reasons set above. Should the Examiner believe that a telephone interview would aid in the prosecution of this application, the Applicant encourages the Examiner to call the undersigned collect at 617.252.3353.

Dated: September 9, 2002

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APPENDIX I
MARKED-UP VERSION OF REWRITTEN CLAIMS
PURSUANT TO 37 CFR § 1.121 (c)(1)(ii)

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22. (Twice Amended) A solution for the treatment of a microbial infection, said solution comprising a sterile liquid vehicle, an antibiotic and a leukotriene dissolved in said sterile liquid vehicle, wherein said solution is aerosolized for administration to a subject].
28. (Twice Amended) A solution for the treatment of a microbial infection, said solution comprising a sterile liquid vehicle, an antibiotic and a leukotriene dissolved in said sterile liquid vehicle, wherein said solution is in a an intratracheal instillation device, said instillation device is selected from the group consisting of an endotracheal tube and a bronchoscope for intratracheal administration to a subject.
33. (Amended) A composition for the treatment of a microbial infection comprising, a sterile liquid vehicle, an antibiotic and a leukotriene dissolved in said sterile liquid vehicle, wherein said solution is contained within a nebulizer.